JD(SF)–11–09
(Tempe, AZ)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES

INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS, LOCAL UNION NO. 131, AFL-CIO
(Schindler Elevator Corporation)

and Case 28-CB-6737

TROY GOSS, An Individual

and Cases: 28-CB-6792
28-CB-6816

MICHAEL J. HARDY, An Individual

Liza Walker-McBride, Esq., for the General Counsel.

Jay Kroshus, Esq., (Youtz & Valdez)
of Albuquerque, New Mexico, and
Louis P. Malone, Esq., (O'Donoghue & O'Donoghue)
of Washington D.C. for the Respondent.

Mary T. Sullivan, Esq. (Segall, Roitman, LLP)
of Boston, Massachusetts, for the National Elevator Industry Educational Program.

DECISION

Statement of the Case

WILLIAM G. KOCOL, Administrative Law Judge. This case was tried in Albuquerque, New Mexico, on November 12-14, 2008. The first charge was filed February 27, 2008[1] and the complaint was issued September 30, 2008. The complaint, as amended at the hearing, alleges that the International Union of Elevator Constructors, Local Union No. 131, AFL-CIO ("Union") violated Section 8(b)(2) and 8(b)(1)(A) by failing and refusing to allow employees Troy Goss, Curtis R. Ware, Robert A. Grover, Leroy D. Stevenson and similarly-situated applicants to enter an apprenticeship program, by causing Schindler Elevator Corporation to fire Goss, who was not referred to employment from the Union's hiring hall, and by denying employment opportunities to certain other named employees and other similarly-situated employees as a result of the Union's failure to follow certain provisions required by collective-bargaining agreements. The complaint also alleges that the Union violated Section 8(b)(1)(A): by failing and refusing to refer those same employees for employment through the Union's hiring hall, filing internal union charges against an employee that resulted in a fine because another employee filed an unfair labor practice charge against the Union, failing and refusing to allow

[1] All dates are 2008 unless otherwise indicated.

employees to see certain hiring hall records, and failing and refusing to abide by the collective-bargaining agreements by failing to post certain provisions at the Union's facility.

The Union filed a timely answer that, as clarified at the hearing, admitted the allegations of the complaint concerning the filing and service of the charges, jurisdiction and interstate commerce, and labor organization and agency status.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Union, I make the following.

Findings of Fact

I. Jurisdiction

Schindler Elevator Corporation, ("Schindler") a corporation, is engaged in the business of elevator installation and maintenance out of its facility in Tempe, Arizona, where it annually purchases and receives goods valued in excess of $50,000 directly from points outside the State of Arizona. The Union admits and I find that Schindler is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Factual Background

The International Union and Schindler, Otis Elevator, EMCO Elevators, Inc., ThyssenKrupp, and Kone, Inc. are parties to collective-bargaining agreements covering elevator constructor mechanics, helpers, apprentices, and probationary employees in the entire state of New Mexico, the El Paso, Texas, area, and three counties in Colorado. These parties have maintained a practice and understanding, detailed in those collective-bargaining agreements, requiring that the Union be the exclusive source of referrals of employees for employment to these signatory employers. The collective-bargaining agreements have separate procedures for experienced workers and new apprentices.

Concerning experienced workers, the collective-bargaining agreements require that the Union "shall establish, maintain, and keep current an open list" of qualified workers; the parties refer to this as the "out-of-work list." The employer is required to request and hire experienced employees from this list. The Union, in turn, is required to refer only workers whose names appear on the out-of-work list. The Union is required to refer someone from their list within 72 hours of a request made by an employer, exclusive of Saturdays and Sundays. If the Union fails to do so, the employer is free to hire workers from any other available source. The Union's business manager, Perry Chase, is responsible for maintaining and referring workers from the out-of-work list. When he learns that a qualified worker has been out of work for at least one day, he adds them to the list. If the list is depleted at the time an employer makes a request for a worker, Chase refers the request to the chairman of the Local Joint Apprenticeship Committee ("JAC") in accordance with the procedures described in the following paragraph; Chase and an employer-designee alternate the position of chair and co-chair of the JAC.

Concerning new apprentices, the collective-bargaining agreements require that applicants for apprenticeship "shall be evaluated and ranked in accordance with the selection procedures contained in the pattern affirmative action plan set forth in the National Guidelines for Apprenticeship Standards. . . . adopted . . . by local committees consisting of representatives

of the IUEC Local Unions and Employers signatory to this collective-bargaining agreement;" the parties refer to the list of ranked applicants generated by this procedure as the "new hire list." As noted, if there are no workers available on the out-of-work list the employer is obligated to use the new hire list provided by the JAC. If the JAC fails to refer anyone the employer is then free to hire workers from any other available source. The chair and co-chair of the JAC participate in the creation of the list, as more fully described below, by conducting oral interviews of the applicants. Since at least August 27, 2007, Schindler and the Union had a practice of using the telephone in making and filling requests.

The National Elevator Industry Education Program (NEIEP") is a Taft-Hartley Trust that is funded by contributions from employers who are parties to a collective-bargaining agreement with the Union. NEIEP runs the apprenticeship program for new employees. David Garcia Aranda is an area coordinator for NEIEP. Aranda oversees the recruitment efforts for the JAC; he assures that the apprenticeship program is run in accordance with proper policies and procedures. Aranda administers exams to persons who enter the program, traveling around the country as he does so. He explained:

> Well, the joint apprenticeship committee, which is overseen locally, is made up of union and company members. They decide when they have to do new recruitment. I come in, oversee the walk-in procedures and the entrance exams, and then, if all their paperwork is correct, then they, the joint apprenticeship committee, interviews and they build a recruitment list.

If the applicant meets the general criteria needed to enter the program, supplies the necessary documentation, and passes a written exam, the applicant is then interviewed by a panel consisting of an employer and a Union representative. Applicants are then placed on the new hire list in the order of the score they received as a result of the interview.

Typically a notice is created advising interested applicants that the Union's JAC will be accepting applications for entrance in its 4-year apprenticeship program. The notice indicates that applications must be filled out in person on a date and time period at a specified location. The notice advices that interviews will be conducted by a hiring committee, an entrance exam will be administered, and applicants must bring copies of their driver's license, high school diploma or GED, and social security card. The notice summarizes as follows:

> The Elevator Constructors perform construction, modernization, service, and repair on various types of elevators, escalators, dumbwaiters, and people movers. Applicants must be 18 years old, possess a high school diploma of GED, pass an entrance examination, pass a valid drug test, be capable of performing the physical requirements of the job, consent to a medical exam, and sit for an interview.

B. Legal Overview

The United States Supreme Court long ago upheld the legality of hiring hall referral systems. *Teamsters Local 357 (Los Angeles-Seattle Motor Express) v. NLRB,* 365 U.S. 667 (1961). But Unions must refer employees according to the procedures established in the collective-bargaining agreements; purposeful departures may violate Sections 8(b)(1)(A) and (2). *Local Union 675, Electrical Workers, (S&M Electric Co.),* 223 NLRB 1499 (1976), enfd. 559 F.2d 1208 (3d. Cir. 1977). However, "mere' negligence in the operation of a referral system does not violate the Act. *Plumbers Local 342, (Contra Costa Electric),* 329 NLRB 688 (1999), reversed sub nom. *Jacoby v. NLRB,* 233 F.3d 611 (D.C. Cir. 2000). But "gross" negligence in

operating a referral does violate the Act. *Plumbers Local 342, (Contra Costa Electric),* 336 NLRB 549 (2001), petition for review denied sub nom. *Jacoby v. NLRB,* 325 F.3d 301 (D.C. Cir. 2003); *Electrical Workers Local 48 (Oregon-Columbia Chapter)* 342 NLRB 101 (2004). A union also violates Section 8(b)(1)(A) when it refuses to allow employees access to its referral records. *Iron Workers Local 709, (E. I. DuPont),* 296 NLRB 199 (1989). Finally, a union may lawfully insist on the termination of an employee hired in contravention of a lawful hiring referral system. *Painters, Local Union No. 487 (American Coatings),* 226 NLRB 299 (1975).

In *International Union of Elevator Constructors, Local 131, (Permian Elevator Corp.),* JD(SF) 55-06, 2006, Judge Gregory Z. Meyerson concluded, among other things, that the Union violated Section 8(b)(1)(A) and (2) of the Act for failing to refer Philip Bowler for employment because Bowler was delinquent in his dues payments to the Union. Judge Meyerson, however, rejected a claim that the Union otherwise failed to administer the hiring hall in accordance with the applicable collective-bargaining agreements. Judge Meyerson also concluded that on June 6, 2006, the Union, through its vice president Daniel Lamar, unlawfully threatened Lawrence J. Goss (the father Troy Goss who is involved in this case) because Lawrence J. Goss had filed an unfair labor practice charge with the Board. Judge Meyerson dismissed other allegation made against the Union concerning Lawrence J. Goss.

In its brief the Union states "From the outset the General Counsel's theory in this case seemed unclear." Based on my discussions with counsel for General Counsel at the hearing, my review of the record and the General Counsel's brief, as discussed below, the theories espoused and the evidence adduced simply do not match up to support any of the allegations in the complaint.

C. Complaint Allegations

1. The complaint alleges that at all material times and at least since October 1, 2007,[2] the Union has failed and refused to abide by Article XXII of the collective-bargaining agreements thereby denying employment opportunities to Steve Stinson, Jeremy Works, Jeremiah Whilser, Jeffrey Rivera, Jose Murga and Dan Howard and similarly-situated hiring hall registrants.

The General Counsel offered no evidence that "at least since October 1, 2007" the Union did anything improper concerning these individuals.

Analysis

In his brief the General Counsel directs my attention to certain events that allegedly occurred in July 2008. But the General Counsel does not show how those events prove up the allegations described in the complaint, nor does he argue how he otherwise gave the Union notice that he would be litigating events that occurred some nine months later. I dismiss this allegation.

2. The complaint alleges that since on or about October 25, 2007,[3] the Union violated Sections 8(b)(1)(A) and (2) by failing and refusing to allow Troy Goss, Curtis R. Ware, Robert A. Grover, Leroy D. Sawyer and similarly-situated applicants to enter NEIEP, even though these applicants had passed both the interview and test portions of NEIEP qualification process.

[2] Paragraph 6(s).

[3] Paragraph 6(d). This allegation was amended to change the date of the violation from "on or about January 3, 2008" to "on or about October 25, 2007."

On October 29, 2007, Aranda administered tests for new applicants in Albuquerque, New Mexico. Goss, who was living in Florida, traveled to Albuquerque and went to the Union's office to take the test.[4] When he arrived Chase told him he was five minutes too late; that the exam had already started. There is no evidence that this was untrue. In other words, Goss arrived too late and was properly turned away. Goss returned to Florida shortly thereafter.

Analysis

There is no evidence that Goss or Curtis R. Ware, Robert A. Grover, Leroy D. Sawyer or similarly-situated applicants passed both the interview and test portions of the NEIEP process "on or about October 25." The General Counsel points to events that occurred in 2008 but those events are not covered by this allegation of the complaint, nor does the General Counsel explain or even contend that he has satisfied its due process burden of providing the Union with clear and concise notice of the allegations against it. I dismiss this allegation of the complaint.

3. The complaint alleges that since on or about October 25, 2007,[5] through the present, the Union has violated Sections 8(b)(1)(A) and (2) by failing and refusing to refer Goss, Ware, Grover, Sawyer, and similarly-situated applicants to employment with the signatory employers.

On January 3, 2008, Aranda conducted another new applicant recruitment process; Chase was also present. As indicated above, all applicants are required to provide, among other things, copies of their social security cards, driver's license, and high school diploma or GED equivalent. Some applicants did not have these documents with them on January 3, but Aranda admitted that he told those applicants that they could submit missing documentation to him by the time he received the test results, which normally came between 10 to 14 days afterwards. A number of applicants who attended were later rejected because they allegedly had not submitted all the necessary documentation in a timely fashion. The General Counsel contends that the Union violated the Act in failing to add these applicants to the new hire list and thereafter refer them for employment.

Goss appeared for the January 3 recruitment also; he brought extra copies of his driver's license and social security card. This time he arrived on time, took the exam, and was interviewed. He was later advised that he did not pass because he failed to submit the necessary documentation, in this case a copy of his high school diploma. Goss testified that before when he appeared at the October 2007 recruitment process, described above, his mother faxed to the Union's office a copy of his driver's license, social security card, and high school diploma. This testimony, of course, is hearsay. The documentary evidence shows that only copies of Goss' driver's license and social security card were faxed to the Union by Goss' mother from Florida. I reject as not credible Goss' testimony that Chase already had a copy of his diploma.

The General Counsel presented the testimony of Leroy Sawyer, who also appeared for the recruitment on January 3. Chase told Sawyer that he was missing some documentation but that if he passed the written exam he could later supply a copy of his high school diploma. Sawyer testified that he was under the impression that the high school diploma was not "a big

[4] Goss testified that he took the exam on about October 25 or 26, but I conclude the date of the exam was October 29.

[5] Paragraph 6 (e). This allegation too was amended to change the date of the violation from "on or about January 3, 2008" to "on or about October 25, 2007."

item that was needed that moment . . . that it was vital to me being hired." He admitted that he never supplied a copy of his diploma. Sawyer received a letter informing him that he failed the interview. He later learned this meant that he failed to submit his high school diploma.

Next, the General Counsel presented the testimony of Curtis Ware. On the day of the interview Ware brought a copy of his driver's license and high school diploma with him. At the Union office he met Chase and Aranda. At the start of the process Ware learned that he also needed a copy of his social security card. Ware commented that he did not have a copy with him. Either Chase or Aranda told Ware to get a copy of it to them, but he did not recall a time deadline. Chase and Aranda together interviewed Ware and Ware thought the interview went well. The next day Ware went to the Social Security office and applied for a new card; the card arrived seven or eight days later. Ware then made a copy, "notated it," and slipped it in the mail slot at the Union's office because no one was there. A few days later Ware received a letter advising him that he did not pass the interview, which he understood meant he failed to provide a copy of his social security card.

Analysis

I begin by noting that this complaint allegation at this time at least informs the Union that the conduct to be litigated occurred not only on or about a certain date but continued "through the present." This puts the Union on notice that this conduct could have occurred at some point after October 25, 2007. This allows me to consider the evidence on the events, described above, in January 2008.

Aranda testified that all four individuals failed to provide necessary documentation. The General Counsel presented evidence that corroborated Aranda's testimony as it related to Sawyer and failed to offer any contradictory testimony as it related to Grover. I have discredited contrary testimony concerning Goss. I see no reason why Aranda would single out Ware, especially given the manner in which he attempted to supply his documentation. I credit Aranda's testimony and dismiss these allegations.

4. The complaint[6] alleges that on about February 13 Schindler, pursuant to the hiring hall procedures, contacted the Union and requested an applicant to start work on February 25, but that the Union failed to respond to this request[7] and: "[I]n connection with its representative status as described above in paragraph 6(a), the Respondent has failed to represent members, member/applicants, other similarly-situated hiring hall registrants, and the Unit, for reasons that are unfair, arbitrary, invidious, and has breached the fiduciary duty it owes to these individuals." [8]

The complaint continues, [9] alleging that on February 13 the Union referred William Sylvester to start work at Schindler on February 25, but that on February 21 the Union instead referred Sylvester to work for another employer during the week of February 25 so that Sylvester notified Schindler that he would not be available to work at Schindler as planned. The complaint[10] then alleges on February 22 and 25 Schindler called the Union three times to

[6] Paragraphs 6(f).
[7] Paragraph 6(k).
[8] Paragraph 6(v).
[9] Paragraph 6(g), (h), and (i).
[10] Paragraph 6(j).

request a qualified applicant to replace Sylvester. The complaint[11] alleges that the Union failed to respond to these requests, thereby again violating Sections 8(b)(1)(A) as described above and[12] thereby also violating Section 8(b)(2). Continuing, the complaint[13] alleges that on about February 25 Schindler directly hired Goss for the position. The complaint then alleges that on about February 25 the Union requested that Schindler discharge Goss thereby again violating Sections 8(b)(1)(A) and (2). [14]

The General Counsel presented the testimony of Michael J. Hardy to support these allegations. Hardy is a Union member and works at Schindler as a service mechanic; he was formerly president of the Union and in the past served on its executive board. When Schindler needed help from the Union's hiring hall Hardy would get permission to hire from his superior, Bradley Lay, and then called Perry Chase, the Union's business manager, and requested a person from the list. Schindler anticipated needing help starting February 25, so consistent with this procedure on February 13 Hardy called Chase and requested help. According to Hardy's own testimony, Chase informed him that the only person on the out-of-work list was Sylvester, a fourth year apprentice and that same day Hardy confirmed that Schindler would accept Sylvester.[15]

Sylvester had worked for Schindler in the past and he was aware that he was to return there on Monday, February 25. On Friday, February 22, however, Sylvester talked to Chase who informed him that sometime the following week a position could be opening up for Otis Elevator. Hoping to become a permanent employee at Otis, Sylvester then advised Chase and Hardy that he was going to reject the offer to work at Schindler and take the job at Otis instead. Sylvester explained that he did not want to work one day at Schindler and then have to quit the next day to take the job at Otis and leave Schindler without a helper.

Hardy, who is a personal friend of Goss' father, knew that Goss had passed the written portion of the examination, so Hardy suggested to Lay that Schindler hire Goss because it seemed that Sylvester would not appear for work on the 25th. Schindler believed the Union had failed in its obligation to refer someone within 72 hours of the request so Schindler decided to hire Goss, who then began working on February 25. Early that day Hardy called the Union and left a message with Chase that Schindler decided to hire Goss.[16] In the meantime the job at Otis did not materialize as planned. At some point that on the 25th Chase called Sylvester, informed him of the turn of events at Otis, and told him to report at Schindler; Sylvester agreed to do so. At some point that same day Chase called Hardy and indicated that he was upset because Schindler had hired Goss; Chase told Hardy that it was illegal to hire Goss and that the work at Otis had not materialized. Hardy answered that he had called the Union on February 13, the Union had referred Sylvester, but Sylvester declined the work. Chase then called Lay and said that Schindler had improperly hired Goss because Sylvester was available for the job because the position that Sylvester hoped to get at Otis did not materialize. Chase asked Lay to hire Sylvester; Lay denied that that Chase asked him to fire Goss. Lay then called Hardy

[11] Paragraph 6(k).

[12] Paragraph 8.

[13] Paragraph 6(l).

[14] Paragraph 6(m).

[15] Remember the complaint alleges that the Union violated the Act by failing to respond to this request.

[16] Remember the complaint alleges that Schindler called three times to request a qualified replacement for Sylvester and that the Union did not respond to these calls. The Union aptly responds in its brief "Thus, the Local could not have responded to a request that was not made."

and, according to Hardy, told him that the Union had called him and threatened to file a grievance if Schindler did not fire Goss; he directed Hardy to lay off Goss and Hardy did so the next morning. Sylvester finally began working for Schindler on February 28 or 29, the job being shut down until then. The foregoing facts are based on a composite of the credible portions of the testimony of Hardy, Sylvester, Chase, and Lay.

Analysis

The General Counsel's entire argument for the detailed and sometimes contradictory allegations described above, often unsupported by the testimony of General Counsel's own witnesses is:

> Although Chase knew that Sylvester declined the work at Schindler for the week of February 25, he failed to provide Schindler with another helper or contact Schindler about his intentions in fulfilling its February 13 request for a helper for February 25.Schindler was well within its contractual rights, under Article XXII to hire from any other source inasmuch as 72 hours has passed since February 13. Nevertheless, Chase told Hardy that it was "illegal" for Schindler to have hired Goss, and Chase insisted that Lay hire Sylvester, which Lay did, thereby causing the termination of Goss.

The problems with this assertion are many. First, as the General Counsel admits, Chase did contact Schindler promptly after its February 13 request and referred Sylvester. And although Sylvester later declined the work, he only informed Chase of this on Friday, February 22. Again, as the General Counsel admits, the next workday Chase spoke to Schindler and clarified the matter by indicating that Sylvester was in fact available. It is important to note that the General Counsel presented no evidence that the Union somehow manipulated the turn of events at Otis; to the contrary the General Counsel present testimony from an official of Otis but questioned him only about wholly unrelated matters. Under these circumstances, I conclude that Sylvester was the proper person for the Union to refer to Schindler, both on February 12 and 25. I dismiss these allegations of the complaint.

5. The complaint[17] alleges that since February 20 the Union violated Section 8(b)(1) by failing and refusing abide by Article XXII of the collective-bargaining agreements by failing and refusing to post the Employment Practice provisions at the Unions facility.

In support of this allegation the General Counsel points out that under Article XXII, paragraph 1(d) of the collective-bargaining agreement the Union is required to post at its hiring hall all "Employment Practice provisions."

Analysis

In his brief the General Counsel does not cite to any evidence that the Union has failed to post this information at its hiring hall; he merely argues that the Union was obligated to do so and any failure to do so violates the Act. In its brief the Union states "The General Counsel, however, failed to introduce a scintilla of evidence as to what is or is not posted in the union hall." I agree. I dismiss this allegation.

[17] Paragraph 6(r).

6. The complaint alleges that on about March 6,[18] the Union violated Section 8(b)(1)(A) when it filed internal union charges against Hardy and fined him $500. In a related allegation the complaint alleges that the Union disciplined Hardy because *Goss* had filed the charge in case 28-CB-6737.[19]

The complaint concludes:[20]

> By engaging in the conduct set forth above in paragraph 6(o) and (p), in connection with its representative status described above in paragraph 6(a), the Respondent has failed to represent Hardy for reasons that are unfair, arbitrary, invidious, and has breached the fiduciary duty it owes to Hardy and other members, member/applicants, hiring hall registrants, and the Unit.

On February 27 Goss filed the initial unfair labor practice charge against the Union in this case. On March 5 Chase forwarded a copy of that charge to his regional director. The next day, March 6, Chase filed internal union charges against Hardy for hiring outside the hiring hall when qualified help was available. In fact, as pointed out above, Hardy did not have permission to hire anyone on his own; his superior at Schindler made those decisions and Chase knew this when he filed the internal union charges. After the Union conducted a trial on the charges on March 31 the Union found Hardy guilty and fined him $500. Hardy appealed to the International Union who is awaiting the results of this case before deciding the appeal.

Analysis

It is not apparent to me why the discipline of Hardy, a member of the Union, standing alone, violates Section 8(b)(1)(A) and the General Counsel supplies no argument for me to consider in this regard. The issue then becomes whether the Union disciplined Hardy because Goss filed a charge with the Board. There is no direct evidence connecting Hardy's discipline to Goss' charge. In cases involving an assessment of motivation the Board generally applies the analysis described in *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied, 445 U.S. 989 (1982). The fundamental problem with the General Counsel's case is the lack on any persuasive evidence that the Union sought to punish *Hardy* as a result of any hostility towards Goss' charge-filing. While the timing of the filing of the internal charges against Hardy, coming about a week after Goss filed his charge, provides cause for concern, it is insufficient to make the necessary connection since it was also close in time to Hardy's alleged misconduct. Although the Union was aware of the fact that Goss had engaged in protected conduct at the time it initiated the disciplinary process against Hardy, there is no evidence of animus against Hardy, or even Goss, because of that conduct.

The General Counsel argues that he has established a violation:

> Based on Chase's failure to file a grievance against Schindler,[21] the timing of Chase filing the internal charges against Hardy vis-à-vis Goss' charge . . ., Chase's discriminatory action against Goss in October 2007 and January 2008, the prior hostility towards Goss' father for filing a charge with the NLRB found by

[18] Paragraph 6(o).
[19] Paragraph 6(p).
[20] Paragraph 6(u).
[21] Alleging that Schindler failed to utilize the hiring hall under the contract or to seek lost wages on behalf of Sylvester.

> Administrative Law Judge Gregory Z. Meyerson JD-SF(55-06), and the friendship between Hardy and Goss' father, ...

I disagree. I have dismissed the allegation the General Counsel relies on to show animus towards Goss, and the hostility towards Goss' father is remote in time and unconnected to Hardy. I dismiss these allegations of the complaint.

7. Concerning these same events the complaint continues:[22]

> By engaging in the conduct set forth above in paragraph 6(o) and (p), in connection with its representative status described above in paragraph 6(a), the Respondent has failed to represent Hardy for reasons that are unfair, arbitrary, invidious, and has breached the fiduciary duty it owes to Hardy and other members, member/applicants, hiring hall registrants, and the Unit.

Analysis

In the context of this case I have no clear idea what this allegation means and again the General Counsel provides no argument for me to consider. I dismiss this allegation of the complaint.

8. The complaint[23] alleges that on about August 14 the Union violated Section 8(b)(1)(A) by failing and refusing the requests of hiring hall applicants to see or have access to the Union's hiring hall procedures and policies and the Union's out-of-work lists.

In support of this allegation the General Counsel points to testimony by Hardy that "I believe it was in March of '08 . . . It may have been later than that"[24] that he and Sylvester spoke to Chase about certain matters.

Analysis

"March" is not remotely close to being "in about August 14." The General Counsel did not seek to amend the complaint to put the Union on notice that he intended to litigate the March events. Nor does the General Counsel explain how the matter has been fully and fairly litigated in the absence of proper notice, and I am not inclined to supply an argument not made by a litigant. Under these circumstances, I dismiss this allegation in the complaint.

Conclusions of Law

I have resolved all of the allegations in the complaint. In his brief the General Counsel appears to argue that the Union violated the Act in other respects, but those contentions are unconnected to any complaint allegation and I do not consider them.

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[22] Paragraph 6(u).

[23] Paragraph 6(q).

[24] In his brief ,the General Counsel asserts that the evidence shows that "On or about August 18, 2008" Hardy requested certain information. The General Counsel cites "(Tr. 164-167; GCX 19(a) and (b)" but nothing in either the transcript or the exhibits supports this contention. The General Counsel is reminded that factual assertions made in briefs must accurately reflect record evidence.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.[25]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. February 26, 2009

William G. Kocol
Administrative Law Judge

[25] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.